

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

MISC. CIVIL APPLICATION NO. 89 OF 2004

Mrs. Sheela Umeshchandra Rathod ... Applicant

V/s

Shri Umeshchandra Rathod ... Respondent

Ms. Smita Gaidhani for the applicant.

None for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 23RD DEC., 2004.

P.C.:

1. This is an application for transfer under Sec. 24 of the C.P.C. of the H.M.P. No. 166 of 2003 filed by the respondent in the Court of Civil Judge, Sr.Divn., Nasik to the Family Court at Aurangabad.

2. The applicant wife is residing at Aurangabad. At Aurnagbad, she is serving as a teacher and living with her 8 years' old daughter. The respondent is serving at Nasik where he has filed petition for divorce on various grounds.

The marriage between the parties took place in the year 1995. For some time they lived normally but thereafter they were separated as a result of which the applicant went to Aurangabad to reside with her parents but her parents are now residing separately and she is living alone with her daughter and serving as a teacher. According to her, it is not convenient for her to come all the way from Aurangabad to Nasik to attend the dates of pending divorce petition and, therefore, she has sought transfer of the petition from Nasik to Aurangabad.

It is also to be noted that, earlier she had filed maintenance petition against the respondent in the Family Court at Aurangabad which was allowed to the extent of maintenance to the daughter and it was directed that she should get monthly maintenance amount from the respondent which is also said to be not being paid regularly.

3. None appears for the respondent though duly served. Even today, the matter was kept back for appearance of the advocate for the respondent. However, he did not remain present. In view of this position, we have to proceed with the matter in absence of the respondent, on

merits. There is no affidavit in reply filed on behalf of the respondent and, therefore, all the allegations made by the applicant have gone unchallenged on record. Besides this aspect, it must be noted that if the balance of convenience is to be considered, it would be more convenient for the respondent to attend the dates at Aurangabad than the applicant to go to Nasik to attend the dates with her 8 years' old daughter on every date. In view of this position, I am inclined to grant the application. Hence, the following order is passed:-

O R D E R

(1) The application is made absolute in terms of prayer clause (a).

(2) H.M.P. No. 166 of 2003 pending in the Court of Civil Judge, Sr. Divn., Nasik stands transferred to the Family Court at Aurangabad.

(3) The Family Court Judge, Aurangabad is directed to expedite the hearing of the petition and to adjudicate it within six months from the date of receipt of Court writ.

(4) The Civil Judge, Sr.Divn., Nasik is directed to transmit the record and proceedings of H.M.P.

No. 166 of 2003 to the Family Court at Aurangabad with immediate effect.

With these directions, the application stands disposed of with no order as to costs.

Parties to act on the authenticated copy of this order.

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